

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|--------------------------------|---|--|
| David Cameron, |) | CASE NO. 1:08 CV 1178 |
| |) | |
| Petitioner, |) | JUDGE PATRICIA A. GAUGHAN |
| |) | |
| vs. |) | |
| |) | |
| Warden, Lake Erie Correctional |) | <u>Memorandum of Opinion and Order</u> |
| Institution, |) | |
| Respondent. |) | |

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Limbert (Doc. 18) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

Discussion

Petitioner, David Cameron, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued his Report and Recommendation recommending that the Petition be dismissed. Petitioner has failed to file

objections to the Report and Recommendation.

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

The Magistrate Judge determined that the Petition is procedurally defaulted because petitioner did not present a timely appeal to the Ohio Supreme Court. In doing so, the Magistrate Judge applied the four-part *Maupin* test. He found the first three prongs to be satisfied and that petitioner failed to establish cause under the fourth factor. Nor did petitioner produce evidence of actual innocence. The Court finds no clear error in this determination.

Conclusion

For the foregoing reasons, the Report and Recommendation is accepted, and the findings and conclusions incorporated herein by reference. Accordingly, the Petition for Writ of Habeas Corpus is dismissed. Furthermore, for the reasons stated herein and in the Report and Recommendation, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 5/14/09